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In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-944

LILLIAN MARULAKIS, *et al.*,
Petitioner,

vs.

CHESTER L. WILLIAMS,
Respondent.

PETITION FOR WRIT OF CERTIORARI
To the Supreme Court of Ohio

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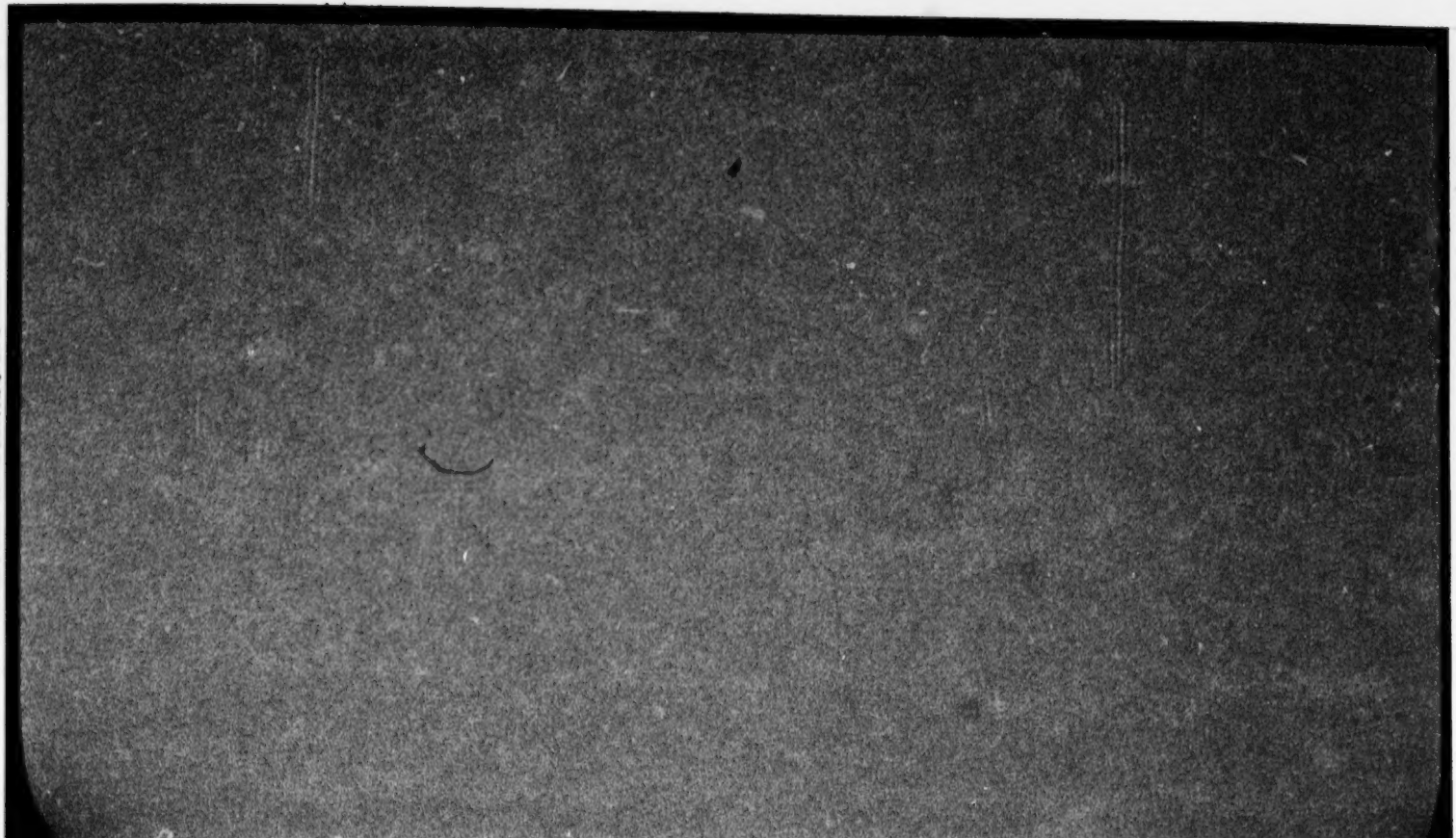


TABLE OF CONTENTS

Opinions Below ---------- 1

Jurisdiction ---------- 2

Question Presented ---------- 2

The Constitutional and Statutory Provisions Involved ---------- 2

Statement of Facts ---------- 3

Reason for Granting the Writ ---------- 4

Conclusion ---------- 5

Appendix:

Journal Entries of the Supreme Court of Ohio -- 6

Opinion and Journal Entry of the Court of Appeals ---------- 7

TABLE OF AUTHORITIES

Cases

Caldas v. Caldas, La. App. 1969, 224 So. 2d 831 ------ 5

Hackner v. Guaranty Trust Co. of New York, C.C.A. N.Y. 1941, 117 F.2d 95, cert. denied, 61 S. Ct. 835, 313 U.S. 559, 85 L. Ed. 1520 ---------- 4

Hoffman Motors Corp. v. Alfa Romeo S. p. A., D.C. N.Y. 1965, 224 F. Supp. 70 ---------- 4

Mullane v. Central Hanover Bank & Trust Co., 70 S. Ct. 652, 339 U.S. 306, 94 L. Ed. 865 ---------- 4

Pennoyer v. Neff, 95 U.S. 714, 24 L. Ed. 565 ---------- 4

Constitution and Statutes

Constitution of the United States, Amendment XIV, Sec. 1 ---------- 2, 4

Ohio Revised Code, Section 2703.08 ---------- 2

28 U.S.C. §1257(3) ---------- 2

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PETITION FOR WRIT OF CERTIORARI
To the Supreme Court of Ohio

The Petitioner, Lillian Marulakis, asks that a writ of certiorari issue to review the judgment of the Ohio Supreme Court rendered in these proceedings on October 5, 1972.

OPINIONS BELOW

The Ohio Supreme Court did not issue an opinion. The opinion of the Ohio 8th District Court of Appeals, as yet unreported, appears at Appendix p. 7. The Cuyahoga County Court of Common Pleas did not issue an opinion.

JURISDICTION

The order or judgment of the Ohio Supreme Court was entered on October 5, 1972. See Appendix p. 7. This petition for a writ of certiorari was filed less than 90 days from the date aforesaid. The jurisdiction of this court is invoked under 28 U.S.C. §1257(3).

QUESTION PRESENTED

In a personal injury civil action where service is attempted by the sheriff by merely leaving a copy of the summons and complaint at the defendant's former place of residence and a default judgment is entered therein, has the due process requirement of the Fourteenth Amendment been satisfied?

THE CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Constitution of the United States, Amendment XIV, §1:

> ". . . nor shall any state deprive any person of life, liberty, or property without due process of law."

Ohio Revised Code Section 2703.08

> "Service shall be made at any time before the return day, by delivering a copy of the summons, with the indorsements thereon, to the defendant personally, or by leaving a copy at his usual place of residence; or, if the defendant is a partnership sued by its company name, by leaving a copy at its usual place of doing business, or with any member of such partnership. The return must be made at the time mentioned in the writ, and the time and manner of service shall be stated on the writ."

STATEMENT OF FACTS

On February 20, 1969, respondent, Chester L. Williams, began this personal injury action in the Cuyahoga County Court of Common Pleas against petitioner, Lillian Marulakis, and others to recover the sum of $200,000.00 claimed as the amount due him for injuries he sustained in an automobile accident.

On January 6, 1969, prior to the date respondent instituted this action, petitioner left her home in Warren, Ohio, for California with the intention of thereafter directly proceeding to Greece to be married and reside. On April 24, 1969, petitioner proceeded to Greece and arrived there on April 25, 1969.

Service of process was attempted herein at Warren, Ohio, by the Sheriff merely leaving, on February 27, 1969, copies of the summons and complaint at petitioner's former place of residence. On October 8, 1969, a default judgment was entered against petitioner in the amount of $30,000.00.

Thereafter, petitioner moved to quash service and, on December 6, 1971, the Court of Common Pleas overruled said motion. Petitioner appealed to the Ohio 8th District Court of Appeals and on June 15, 1972, said Court affirmed the trial court. Its opinion is set out at Appendix p. 7. On July 5, 1972, petitioner filed her Notice of Appeal to the Supreme Court of Ohio with the Court of Appeals alleging that the case involves a substantial constitutional question and a matter of great public interest.

On October 5, 1972, the Ohio Supreme Court dismissed her appeal and overruled her motion to certify. This petition for a writ of certiorari is filed in order to obtain this Court's review of the orders of the Ohio Supreme Court of October 5, 1972.

REASON FOR GRANTING THE WRIT

In a personal injury civil action where service is attempted by the sheriff by merely leaving a copy of the summons and complaint at the defendant's former place of residence and a default judgment is entered therein, has the due process requirement of the Fourteenth Amendment been satisfied?

This case shocks the conscience. It is a glaring example of the extent of injustice and deprivation of due process of law which results from the incorrect application of methods of service of process which require substantially less than actual notice to a defendant that he has been sued.

The petitioner herein now has a non-meritorious default judgment against her for an unconscionable sum of money as a result of a minor traffic collision. Petitioner never knew the lawsuit existed until months after the default judgment was entered.

Petitioner submits that the purported "residence service" of process herein fell substantially short of due process of law since it was conclusively shown that, under the facts, it was not probable that petitioner would receive actual notice of the litigation and that in fact she received no such notice to prevent a default.

This Court and the lower federal courts have long held that, in order to meet the 14th Amendment standard of due process of law, service of process must be reasonably calculated to give a defendant actual notice of proceedings against him. *Pennoyer v. Neff*, 95 U.S. 714, 24 L. Ed. 565; *Mullane v. Central Hanover Bank & Trust Co.*, 70 S. Ct. 652, 339 U.S. 306, 94 L. Ed. 865; *Hackner v. Guaranty Trust Co. of New York*, C.C.A.N.Y. 1941, 117 F.2d 95, cert. denied, 61 S. Ct. 835, 313 U.S. 559, 85 L. Ed. 1520; *Hoffman Motors Corp. v. Alfa Romeo S. p. A.*, D.C. N.Y. 1965, 224 F. Supp. 70.

In *Caldas v. Caldas,* La. App. 1969, 224 So. 2d 831, a case similar to the instant case, the court held that, where the defendant had left the parish for a foreign country and did not intend to return, service on his former roommate was insufficient and later actual knowledge did not cure the defect.

CONCLUSION

The question of the sufficiency of service of process in light of the Fourteenth Amendment is one that affects the bench and bar throughout the United States in each case which is instituted in every court and agency. It is respectfully submitted that this Court should lay down the constitutional standards which must be uniformly applied throughout the United States. The question presented by this petition is, accordingly, both an extremely important constitutional question and one of great public importance.

Respectfully submitted,

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APPENDIX

JOURNAL ENTRIES OF THE SUPREME COURT OF OHIO

(Entered October 5, 1972)

No. 72-591

THE SUPREME COURT OF THE STATE OF OHIO
THE STATE OF OHIO, CITY OF COLUMBUS

CHESTER L. WILLIAMS,
Appellee,

vs.

LILLIAN MARULAKIS, *et al.*,
Appellants.

MOTION FOR AN ORDER DIRECTING THE COURT OF APPEALS FOR CUYAHOGA COUNTY TO CERTIFY ITS RECORD

It is ordered by the Court that this motion is overruled.

* * * * *

(Caption as above)

APPEAL FROM THE COURT OF APPEALS FOR CUYAHOGA COUNTY

This cause, here on appeal as of right from the Court of Appeals for Cuyahoga County, was heard in the manner prescribed by law, and, no motion to dismiss such appeal having been filed, the Court sua sponte dismisses the appeal for the reason that no substantial constitutional question exists herein.

OPINION AND JOURNAL ENTRY OF THE COURT OF APPEALS

(Filed June 15, 1972)

No. 31, 637

COURT OF APPEALS OF OHIO
EIGHTH DISTRICT, COUNTY OF CUYAHOGA

CHESTER L. WILLIAMS,
Plaintiff-Appellee,

vs.

LILLIAN MARULAKIS, *et al.,*
Defendant-Appellant.

This cause came on to be heard upon the pleadings and the transcript of the evidence and the record in the Common Pleas Court, and was argued by counsel for the parties; and upon consideration, the court finds no error prejudicial to the appellant and therefore the judgment of the Common Pleas Court is affirmed. Each assignment of error was reviewed and upon review the following disposition made:

For ease in reference plaintiff-appellee is referred to hereafter as "appellee" and defendant-appellant as "appellant".

Appellant assigns one error:

"The trial court abused its discretion in denying defendant-appellant's motion to quash service."

We find the assignment of error without merit. In the application of the statute[1] providing for service on a

[1] Ohio Revised Code §2703.08 applicable at the time of the service in issue in this case.

defendant by leaving a copy of the summons "at his usual place of residence", it is no abuse of discretion for a trial court to deny a motion to quash service under the circumstances of the present case. Here the place of challenged service listed after such attempted service was the same as the defendant's place of residence on her:

(1) application for a master charge card (Tr. Plaintiff's Exhibit No. 1)
(2) renewed driver's license[2]
(3) reinstated voting registration (Tr. Plaintiff's Exhibits Nos. 4 & 5)

And, although appellant left her residence for California and eventually for Greece where she was scheduled to marry but did not consummate it, she returned to the residence of service for a brief interval after service (Tr. 12, deposition of defendant, dated May 21, 1971). Moreover, she knew of service for at least 5 months before challenging it (cf. Tr. 15 and 28 and motion to quash service filed May 3, 1971). These facts indicate that the requisite intent to change residence properly may be deemed *not* to have been proven. The trial court's exercise of its discretion was not abused and will not be disturbed on appeal. The ruling in *Farley v. Pickett*, 177 Ohio St. 133 (1964) is clearly distinguishable on its facts.[3]

It is ordered that appellee recover of appellant his costs herein taxed.

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[2] The application was dated December 29, 1970, and answered the question "Are the name and address the same as previous license?" "Yes." Defendant also said she was not the holder of a driver's license from any other state or jurisdiction (Tr. Plaintiff Exhibit No. 3).

[3] (In the *Farley* case, "In the circumstances narrated and considering the time elements involved," there was an abuse of discretion, id. at p. 134. Defendant, who has been in Florida, found a summons on her return four days after answer was due. Default judgment was taken one day after her return which she promptly moved to vacate within term, id. at pp. 133-135).

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the Common Pleas Court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure. Exceptions.

WASSERMAN, C. J., /s/DANIEL H. WASSERMAN
JACKSON, J., *Presiding Judge*
DAY, J. CONCUR.